Chicago-Kent Law Review

Volume 45 | Issue 1 Article 12

April 1968

Constitutional Law - Privileges or Immunities and Class Legislation -Whether Section 29 of the Limitations Act is Constitutional

Charles W. Jakopich

A similar conclusion was reached in the *Fuller* case where the plaintiff claimed she was thrown by a peculiar motion of the escalator. The court ruled that the mere showing of an injury was not enough to infer negligence. There must be an affirmative showing of negligence or circumstances from which it may be inferred. It is highly likely, if the language in *Tolman* is to be applied, the results of future cases will be much like those reached in the *Conway* and *Fuller* cases where no affirmative showing of negligence can be made.

MICHAEL D. MARRS

CONSTITUTIONAL LAW—PRIVILEGES OR IMMUNITIES AND CLASS LEGISLATION—WHETHER SECTION 29 OF THE LIMITATIONS ACT IS CONSTITUTIONAL.—In the recent case of *Skinner v. Anderson*, 38 Ill. 2d 455, 231 N.E.2d 588 (1967), the Supreme Court of Illinois was confronted with the problem of whether a 1963 act[1] of the legislature, which required that a suit arising out of a defective condition of an improvement to real estate be brought against the architect within four years after his performance, was constitutionally valid. The trial court found for the architect and the Illinois Supreme Court reversed and remanded, holding that the act was unconstitutional[2] as violative of Section 22 of Article IV[3] of the Illinois Constitution. The court stated

1 Ill. Rev. Stat. ch. 83, § 24F (1967), provides in its pertinent parts that an action to recover damages for an injury to property, real or personal, or for the injury to a person, or for bodily injury or wrongful death arising out of a defective and unsafe condition of an improvement to real estate,

> . . . [s]hall be brought against any person performing or finishing the design, planning, supervision of construction or construction of such improvement to real property, unless such cause of action shall have accrued within four years after the performance or furnishing of such services and construction . . . .

Three other states have enacted statutes of a similar nature. The statutes are Michigan Stat. Ann. 27A.5839 (1967), Nevada Rev. Stat. 11.205 (1957), and Baldwin's Ohio Rev. Code Ann., Title 2305.131 (1964). So far, the constitutionality of these statutes has not been contested.

2 The plaintiff appealed the trial court's decision on various grounds and the court said that Section 29 of the Limitations Act probably violated Section 13 of Article IV of the Illinois Constitution. Section 13 of Article IV states that every act shall have only one subject and that one subject has to be expressed in the title. If an act should contain any subject not expressed in the title, the act shall be void only as to that much not expressed in the title. Section 29 of the Limitations Act is entitled "An Act in regards to limitations," though the Section is not concerned with limitations in the ordinary sense. A statute of limitations normally governs the time within which a legal proceeding must be instituted after a cause of action occurs. Section 29 goes further than just limiting the time in which a suit may be brought; it also bars a cause of action before it occurs. The title of Section 29 does not mention that it bars a cause of action and thus under Section 13 of Article IV a subject not expressed in the title is void. The plaintiff had not argued this point and accordingly the court did not rule on it. What in fact is the effect of Section 29 is to possibly preclude an action before all elements of the tort become present. The damage may not occur until after the four year period.

3 Ill. Const. Act. IV, § 22, provides a list of subjects upon which there shall be no special legislation, none of which are relevant here. It then concludes with a general provision that "in all other cases where a general law may be applicable, no special law shall be enacted."

that the classification of 'architects and contractors' for the purpose of granting them immunity from suit after four years is arbitrary and not reasonably related to the purpose of the act.[4]

Louise Skinner, on her own behalf and as the administratrix of the estates of her husband and daughter, brought suit against the building contractor, service repairman, and architect. She alleged that the architect failed to provide ventilation for the rooms housing the air conditioning machinery, and, because of this, leaking refrigerant gas corroded the burners of the gas-fired boiler and caused the escape of toxic gases, which caused the deaths of her husband and daughter and serious injury to herself. The trial court dismissed the complaint against the architect pursuant to Section 29 of the Limitations Act[5] since the injury and deaths did not occur within four years after the architect's performance.

The Illinois Constitution of 1848 contained provisions[6] designed to restrict the power of the General Assembly to pass private, local or special laws. These limitations, however, had little effect in reducing the number of private and special laws. It was for the purpose of checking the passage of a great number of private or special laws that Section 22 of Article IV of the present Illinois Constitution was adopted by the convention of 1869-1870. In fact, the federal statute[7] prohibiting the granting to any corporation, association, or individual any special privilege or immunity was taken from Section 22 of Article IV.

[4] There are three Illinois cases in which the question of constitutionality of Section 29 of the Limitations Act was posed, but in all three cases the constitutionality of Section 29 was not discussed by the court. The three cases were decided by the court on different grounds.

In *Casey v. Alba*, 75 Ill. App. 2d 343, 220 N.E.2d 883 (1st Dist. 1966), the plaintiff brought suit for injuries due to defendant's alleged violations of the Structural Work Act; the trial court found for the defendant. The plaintiff appealed on the ground that Section 29 of the Limitations Act is in conflict with the two year statute of limitations on personal injuries, and therefore Section 29 of the Limitations Act and its four year period of limitation should control. The Appellate Court held that there was no conflict between the provisions of the two statutes and since the suit was brought over two years after the cause of action occurred, it is barred by the statute of limitations for personal injuries.

The court held in *Laukkamen v. Jewel Tea Co.*, 78 Ill. App. 2d 153, 222 N.E.2d 584 (4th Dist. 1966), that Section 29 of the Limitations Act does not establish a date by which an injury must occur to be actionable. The defendant had set up Section 29 of the Limitations Act as a defense to his being sued for injuries to plaintiff, occurring due to a windstorm causing a concrete wall to fall on the plaintiff. Since Section 29 of the Limitations Act was not a bar to the cause of action and the plaintiff's injury was the result of the defendant's negligence, he was found liable.

Plaintiff, in *Simoniz v. J. Emil Anderson and Sons* 81 Ill. App. 2d 428, 225 N.E.2d 161 (3d Dist. 1967), brought suit for damages to his property due to a roof of a building collapsing. Defendant set up Section 29 of the Limitations Act as a defense, but the court did not even discuss the applicability of Section 29. The court held that suit was barred by Section 16 of the Limitations Act; suits for damage to property must be brought within four years after construction.

[5] *Supra* note 1.

[6] Ill. Const. art. 3, §§ 32 and 36 (1870).

[7] 24 Stat. 170 (1886), 48 U.S.C. § 1471 (1952).

Class legislation, a term often carelessly used, consists of those laws which are limited in their operation to certain persons or classes of persons, or to certain districts within a state. Such legislation is of two kinds, namely, general legislation in which the classification is natural and reasonable and consequently valid; and special legislation in which the classification is arbitrary and capricious and therefore invalid. The term special legislation in a narrower sense implies legislation obnoxious to the constitution; special legislation is that which makes improper discrimination by conferring privileges on a class arbitrarily selected from a large number of persons who are connected in the same manner to the privileges, without reasonable distinction or substantial difference. Class legislation is invalid where the classification is arbitrary and unreasonable. Legislation that operates equally on all within the same class is called legislation and is valid.

The courts have developed four standards which are applied to the specific facts of each case to judge if the legislation is special legislation and invalid, or if the legislation is general legislation and valid. The four standards are:

(1) The classification must be rational.
(2) The classification must be based on a substantial and real difference.
(3) The classification must be reasonably related to the purpose of the legislation.
(4) The classification must be applied equally to everyone in similar circumstances.

The legislature has the power to classify[8] and a statute which makes classifications which are rational and not arbitrary is valid. In the case of *Illinois Association of Fire Fighters v. Waukegan*,[9] the court upheld a statute[10] requiring the City of Waukegan to engage in arbitration with firemen over a salary dispute. The reason the statute was found constitutional was that there is a rational difference between the municipal employees not covered by the arbitration procedure and the firemen, who are covered by the arbitration procedure. The vital interest of the public in prompt and adequate protection against fire is the basis of the classification.

In *Gaca v. City of Chicago*,[11] the City appealed a judgment of $2300 it was ordered to pay to a police officer. The sum of $2300 represented the amount of a judgment obtained against the officer by a couple, on account of their having been falsely arrested. The City contended the statute[12] requiring a municipality having a population of 500,000 or over to indemnify a police officer for a judgment against him for injury caused by him while

8 City of Chicago v. Willett Co., 1 Ill. 2d 311, 115 N.E.2d 785 (1953).
9 37 Ill. 2d 423, 226 N.E.2d 606 (1967).
10 Ill. Rev. Stat. ch. 24, §§ 10-3-8 through 10-3-11 (1965).
11 411 Ill. 146, 103 N.E.2d 617 (1952).
12 Ill. Rev. Stat. ch. 24 § 1-15 (1949).

engaged in the performance of his duties violated Section 22 of Article IV. The classification of policemen into those employed by municipalities having a population of 500,000 or over and those employed by municipalities having a population of less than 500,000 was found to be constitutional. The need for more policemen in a large municipality was held by the court to be a reasonable basis for this classification, and indemnification is a method of attracting qualified persons to become members of the police force.

In *Phillips v. Browne*,[13] an act granting legislators, during a legislative session, immunity from being served with a summons was struck down by the court on the ground that it constituted special legislation. The legislators were already protected from court attendance during a legislative session by another act and therefore there was no rational basis for the added immunity.

Thus, classification itself is constitutional if based on rational grounds.[14] In the *Skinner v. Anderson* case, the arbitrary quality of the classification rendered it unconstitutional. There is no rational basis for singling out architects and contractors and granting them immunity from being sued after four years. Why just architects and contractors? Many other professions and trades were involved in the construction of the Skinner's house. They all should have been treated the same.

The second standard applied by the courts is that there must be a substantial and real difference between the class favored by the legislation and the class not so favored. In *Grasse v. Dealers' Transport*,[15] the plaintiff sustained injuries in the course of his employment as a result of a motor vehicle collision caused by the alleged negligence of one of defendant's employees. A provision of the Workmen's Compensation Act[16] provided that an employee injured in the course of his employment by the negligence of a third party who is also covered by the Act has no cause of action against the third party; the injured employee could only secure compensation from his employer. If the negligent third party was not covered by the Act, then the injured employee had a cause of action against him. The negligent third party in this case was covered by the Act. In deciding this case, the court noted that there is no substantial difference between an injured employee who could sue a third party tortfeasor (not covered by the Act) and an injured employee who could not sue a third party tortfeasor (covered by the Act). The classification was deemed to be invalid since the sole basis for differentiation was a fortuitous circumstance, the third party tortfeasor being covered or not being covered by the Act.

Likewise, in the *Skinner* case, there was no substantial difference between the architect and the rest of the individuals who worked on the house.

13 270 Ill. 450, 110 N.E. 601 (1915).
14 Hunt v. Rosenbaum Grain Corp., 355 Ill. 504, 189 N.E. 907 (1934).
15 412 Ill. 179, 106 N.E.2d 124 (1952).
16 Ill. Rev. Stat. ch. 48, § 166 (1947).

Section 29 of the Limitations Act singled out architects and contractors and granted them immunity after four years, even though there are many others whose negligence in connection with the construction of a house might result in damage to property or injury to persons more than four years after construction of the house is completed.

The third standard is that the classification must bear a reasonable relation to the purpose of the act; yet the legislature does not have to be systematic or logical in its classification.[17] The court, in *Marcellis v. City of Chicago*,[18] held a statute granting ex-servicemen free peddlers' licenses to be invalid. The work done by a peddler calls for no qualities such as a soldier or sailor may require in the service. The purpose of the statute was to benefit ex-servicemen by allowing them to peddle merchandise without paying for a license, but a court, in deciding if a statute is special legislation, is not concerned with how beneficial or desirable the legislation may be.[19] There is no reasonable relationship between being an ex-serviceman and being a peddler of merchandise.

The legislative purpose of Section 29 of the Limitations Act is to prevent stale claims. But why are only the claims against architects and contractors given the protection of immunity after four years, while stale claims may be brought against others who have contributed to the construction of the Skinner house?

The fourth and last standard used by the courts is that the classification must apply in the same manner to all persons in like circumstances. In *Harvey v. Clyde Park District*,[20] a child was injured due to the negligence of the Park District in maintaining its facilities. The court found a statute[21] exempting the Park District from tort liability to be special legislation and unconstitutional. The rationale was that many governmental units carry on the same or similar activities. Some persons injured by these activities would recover damages while others would not, depending solely upon the type of local governmental unit that happened to be the defendant in the action. The same person injured in a city recreational area could recover, but not if he was injured by the same manner of negligence in a Park District area. The court gave a good illustration of the possible inequality:

> There is no reason why one who is injured by a park district truck should be barred from recovery while one who is injured by a school district truck is allowed to recover within a prescribed limit. And to the extent that recovery is permitted or denied on an arbitrary basis, a special privilege is granted in violation of Section 22 of Article IV.[22]

17 Bagdonas v. Liberty Land and Inv. Co., 309 Ill. 103, 140 N.E. 49 (1923).
18 349 Ill. 422, 182 N.E. 394 (1932).
19 Sutter v. Peoples Light and Coke Co., 284 Ill. 634, 120 N.E. 562 (1918).
20 32 Ill. 2d 60, 203 N.E.2d 573 (1965).
21 Ill. Rev. Stat. ch. 122, §§ 823-825 (1963).
22 *Supra* note 20, at 65, 203 N.E.2d at 576.

A law is not local or special and thus violative of the constitution if it operates in the same manner on all persons in like circumstances. However, Section 29 of the Limitation Act failed in this respect; it did not grant the benefit of immunity to others similarly situated to the architect and contractor; for example, the engineers, the subcontractors and the material suppliers were not granted the same immunity even though they also contributed to the construction of the Skinner's house.

Thus, it is shown that Section 29 of the Limitations Act, which granted immunity from suit after four years to architects and contractors, is invalid as special legislation. Section 29 of the Limitations Act violated each of the four standards previously discussed.

Statutes are void as class legislation whenever they are restricted in their application to certain professions, trades, and occupations without any reasonable basis for such partial application or discrimination, or whenever persons engaged in the same business are subject to different restrictions or are given different privileges under the same conditions.

Illinois has two special statutes similar to Section 29 of the Limitations Act. One statute[23] requires that a suit be brought against a registered land surveyor within four years after the person knows of or should have known of the surveyor's negligence. The other statute[24] provides that a suit be brought against an individual who performs a medical, dental or surgical treatment or operation on a patient and leaves a foreign substance in that patient's body within ten years after treatment or operation. It would appear that even though these statutes classify by profession and give to individuals of these professions immunity from liability after a statutory period has elapsed, these statutes are constitutional. The statutes apply with equal force to everyone within the designated class. Above all, there are reasonable grounds for the classification. Land surveyors are a distinct class by themselves, doing one specialized task. And all persons who make incisions in the body of another in order to treat him are considered as one class. As long as there is reasonable ground for the classification, it is valid, even though the act confers different rights or imposes different burdens on a particular class.

If the legislature would have drafted Section 29 of the Limitations Act to read that a cause of action must be brought against everyone who contributed to the construction of an improvement to real estate within four years, the statute may not have been found to be special legislation, since everyone in similar circumstances would have been treated in the same way, the similar circumstances being the contribution to the construction of Mrs. Skinner's house. Also, the legislature could have divided the contributions into an active and passive class, the active class being those who

23 Ill. Rev. Stat. ch. 83, § 249 (1967).
24 Ill. Rev. Stat. ch. 82, § 22-1 (1967).

actually did work on the house, and the passive class those who only supplied materials which were used in the construction of the house. Then the legislature could have provided for a different statute of limitations for each class, or no statute of limitations for one class and a statute of limitations for the other class. This legislation may have been treated as constitutional.

"The right to legislate implies the right to classify,"[25] and classification is not only permitted but is required of the legislature. The economy and function of government could not continue without a degree of permitted classification. The problem is to determine to what degree classification should be permitted. Every citizen has the right to share the common benefits of the government and the legislature may not arbitrarily confer upon one class benefits not conferred upon another class in a like situation. Where classification is reasonable and based on some difference in the classes, which is distinctly inherent and applicable to them, the legislation is valid. In the final analysis, what is required is that all persons shall be treated alike under like circumstances.

CHARLES W. JAKOPICH

25 Frankfurter, concurring, in Martin v. City of Struthers, 319 U.S. 141, 154, 63 S. Ct. 862 (1943).